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Attorneys for Defendants Genexa, Inc., Max Spielberg, and David Johnson

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

MICHAEL SINEL, an individual,

Plaintiff,

v.

GENEXA, INC., a Delaware corporation;
MAX SPIELBERG, an individual; DAVID
JOHNSON, an individual; and DOES 1
through 50, inclusive,

Defendants

GENEXA, INC., a Delaware corporation;
MAX SPIELBERG, an individual; DAVID
JOHNSON, an individual;

Counter-Claimants.

v.

MICHAEL SINEL, an individual, and
MSSMD INVESTMENTS, INC., a
Delaware Corporation, and MOES 1
through 20,

Counter-Defendants.

CASE NO: 2:22-cv-03961-FMO-MAA

[Lower Court Case No.: 21SMCV01977
Los Angeles County Superior Court,
Santa Monica Courthouse]

**STIPULATED PROTECTIVE
ORDER**

Judge: Hon. Fernando M. Olguin
Dept.: 6D

Complaint Filed:
December 20, 2021

First Amended Complaint Filed:
May 16, 2022

Trial Date: None Set

I. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use

1 for any purpose other than prosecuting this litigation may be warranted. Accordingly,
2 the parties hereby stipulate to and petition the Court to enter the following Stipulated
3 Protective Order. The parties acknowledge that this Order does not confer blanket
4 protections on all disclosures or responses to discovery and that the protection it affords
5 from public disclosure and use extends only to the limited information or items that are
6 entitled to confidential treatment under the applicable legal principles. The parties
7 further acknowledge, as set forth in Section XIII(C), below, that this Stipulated
8 Protective Order does not entitle them to file confidential information under seal; Civil
9 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
10 will be applied when a party seeks permission from the Court to file material under seal.

11 **II. GOOD CAUSE STATEMENT**

12 This action is likely to involve shareholder investment information, capitalization
13 tables, documents pertaining to valuations of the Defendant Genexa, Inc., documents
14 pertaining to the criminal case of Michael Sinel which were filed under seal in this court,
15 financial records, bank statements, trade secrets, business records and other valuable
16 research, development, commercial, financial, technical and proprietary information for
17 which special protection from public disclosure and from use for any purpose other than
18 prosecution of this action is warranted. Such confidential and proprietary materials and
19 information consist of, among other things, confidential business or financial
20 information, information regarding confidential business practices, or other confidential
21 research, development, or commercial information (including information implicating
22 privacy rights of third parties), information otherwise generally unavailable to the
23 public, or which may be privileged or otherwise protected from disclosure under state
24 or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite
25 the flow of information, to facilitate the prompt resolution of disputes over
26 confidentiality of discovery materials, to adequately protect information the parties are
27 entitled to keep confidential, to ensure that the parties are permitted reasonable
28 necessary uses of such material in preparation for and in the conduct of trial, to address

1 their handling at the end of the litigation, and to serve the ends of justice, a protective
 2 order for such information is justified in this matter. It is the intent of the parties that
 3 information will not be designated as confidential for tactical reasons and that nothing
 4 be so designated without a good faith belief that it has been maintained in a confidential,
 5 non-public manner, and there is good cause why it should not be part of the public
 6 record of this case.

7 **III. DEFINITIONS**

8 A. Action: *Michael Sinel v. Genexa Inc., et al.* Case No. 2:22-cv-03961-
 9 FMO-MAA

10 B. Challenging Party: A Party or Non-Party that challenges the designation
 11 of information or items under this Order.

12 C. “CONFIDENTIAL” Information or Items: Information (regardless of
 13 how it is generated, stored or maintained) or tangible things that qualify for
 14 protection under Federal Rule of Civil Procedure 26(c), and as specified above
 15 in the Good Cause Statement.

16 D. Counsel: Outside Counsel of Record and In-House Counsel (as well as
 17 their support staff).

18 E. Designating Party: A Party or Non-Party that designates information
 19 or items that it produces in disclosures or in responses to discovery as
 20 “CONFIDENTIAL.

21 F. Disclosure or Discovery Material: All items or information, regardless
 22 of the medium or way it is generated, stored, or maintained
 23 (including, among other things, testimony, transcripts, and tangible things), that
 24 is produced or generated in disclosures or responses to discovery in this matter.

25 G. Expert: A person with specialized knowledge or experience in a matter
 26 pertinent to the litigation who has been retained by a Party or its counsel to serve
 27 as an expert witness or as a consultant in this Action.

28 H. House Counsel: Attorneys who are employees of a party to this Action.

1 House Counsel does not include Outside Counsel of Record or any other
2 outside counsel.

3 I. Non-Party: Any natural person, partnership, corporation, association,
4 or other legal entity not named as a Party to this action.

5 J. Outside Counsel of Record: Attorneys who are not employees of a
6 party to this Action but are retained to represent or advise a party to this Action
7 and have appeared in this Action on behalf of that party or are affiliated with a
8 law firm which has appeared on behalf of that party, and includes support staff.

9 K. Party: Any party to this Action, including all of its officers,
10 directors, employees, consultants, retained experts, and
11 Outside Counsel of Record (and their support staffs).

12 L. Producing Party: A Party or Non-Party that produces Disclosure or
13 Discovery Material in this Action.

14 M. Professional Vendors: Persons or entities that provide litigation
15 support services (e.g., photocopying, videotaping, translating, preparing exhibits
16 or demonstrations, and organizing, storing, or retrieving data in any form or
17 medium) and their employees and subcontractors.

18 N. Protected Material: Any Disclosure or Discovery Material that is
19 designated as "CONFIDENTIAL."

20 O. Receiving Party: A Party that receives Disclosure or Discovery
21 Material from a Producing Party.

22 **IV. SCOPE**

23 The protections conferred by this Stipulation and Order cover not only Protected
24 Material (as defined above), but also (1) any information copied or extracted from
25 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
26 Material; and (3) any testimony, conversations, or presentations by Parties or their
27 Counsel that might reveal Protected Material.

28 Any use of Protected Material at trial shall be governed by the orders of the trial

1 judge. This Order does not govern the use of Protected Material at trial.

2 **V. DURATION**

3 Even after final disposition of this litigation, the confidentiality obligations
4 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
5 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
6 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
7 and (2) final judgment herein after the completion and exhaustion of all appeals,
8 rehearings, remands, trials, or reviews of this Action, including the time limits for filing
9 any motions or applications for extension of time pursuant to applicable law.

10 **VI. DESIGNATING PROTECTED MATERIAL**

11 A. Exercise of Restraint and Care in Designating Material for Protection.

12 1. Each Party or Nonparty that designates information or items for
13 protection under this Order must take care to limit any such designation
14 to specific material that qualifies under the appropriate standards. The
15 Designating Party must designate for protection only those parts of
16 material, documents, items, or communications that qualify so that other
17 portions of the material, documents, items, or communications for which
18 protection is not warranted are not swept unjustifiably within the ambit
19 of this Order.

20 2. Mass, indiscriminate, or routinized designations are prohibited.
21 Designations that are shown to be clearly unjustified or that have been
22 made for an improper purpose (*e.g.*, to unnecessarily encumber the case
23 development process or to impose unnecessary expenses and burdens on
24 other parties) may expose the Designating Party to sanctions.

25 3. If it comes to a Designating Party's attention that information or items
26 that it designated for protection do not qualify for protection, that
27 Designating Party must promptly notify all other Parties that it is
28 withdrawing the inapplicable designation.

1 B. Manner and Timing of Designations.

2 1. Except as otherwise provided in this Order (*see, e.g.*, Section B(2)(b)
3 below), or as otherwise stipulated or ordered, Disclosure or Discovery
4 Material that qualifies for protection under this Order must be clearly so
5 designated before the material is disclosed or produced.

6 2. Designation in conformity with this Order requires the following:

7 a. For information in documentary form (*e.g.*, paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or
9 trial proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each
11 page that contains protected material. If only a portion or portions of the
12 material on a page qualifies for protection, the Producing Party also must
13 clearly identify the protected portion(s) (*e.g.*, by making appropriate
14 markings in the margins).

15 b. A Party or Nonparty that makes original documents available for
16 inspection need not designate them for protection until after the inspecting
17 Party has indicated which documents it would like copied and produced.
18 During the inspection and before the designation, all of the material made
19 available for inspection shall be deemed “CONFIDENTIAL.” After the
20 inspecting Party has identified the documents it wants copied and
21 produced, the Producing Party must determine which documents, or
22 portions thereof, qualify for protection under this Order. Then, before
23 producing the specified documents, the Producing Party must affix the
24 “CONFIDENTIAL legend” to each page that contains Protected Material.
25 If only a portion or portions of the material on a page qualifies for
26 protection, the Producing Party also must clearly identify the protected
27 portion(s) (*e.g.*, by making appropriate markings in the margins).

28 c. For testimony given in depositions, that the Designating Party identify the

1 Disclosure or Discovery Material on the record, before the close of the
2 deposition, all protected testimony.

- 3 d. For information produced in form other than document and for any other
4 tangible items, that the Producing Party affix in a prominent place on the
5 exterior of the container or containers in which the information is stored
6 the legend "CONFIDENTIAL." If only a portion or portions of the
7 information warrants protection, the Producing Party, to the extent
8 practicable, shall identify the protected portion(s).

9 C. Inadvertent Failure to Designate.

- 10 1. If timely corrected, an inadvertent failure to designate qualified
11 information or items does not, standing alone, waive the Designating Party's right
12 to secure protection under this Order for such material. Upon timely correction
13 of a designation, the Receiving Party must make reasonable efforts to assure that
14 the material is treated in accordance with the provisions of this Stipulated
15 Protective Order.

16 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 A. Timing of Challenges.

- 18 1. Any party or Non-Party may challenge a designation of confidentiality at
19 any time that is consistent with the Court's Scheduling Order.

20 B. Meet and Confer.

- 21 1. The Challenging Party shall initiate the dispute resolution process
22 which shall comply with Local Rule 37.1 et seq., and with Section
23 4 of Judge Audero's Procedures ("Mandatory Telephonic
24 Conference for Discovery Disputes").¹

- 25 C. The burden of persuasion in any such challenge proceeding shall be on the
26

27 ¹ Judge Audero's Procedures are available at
28 <https://www.cacd.uscourts.gov/honorable-maria-audero>.

Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

VIII. ACCESS TO AND USE OF PROTECTED MATERIALS

A. Basic Principles.

1. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section XIV below.

2. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

B. Disclosure of "CONFIDENTIAL" Information or Items.

1. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

a. The Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

b. The officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

c. Experts (as defined in this Order) of the Receiving Party to whom

disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

- d. The Court and its personnel;
- e. Court reporters and their staff;
- f. Professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary or this Action and who have signed the “Acknowledgment and Agreement to be Bound” attached as Exhibit A hereto;
- g. The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;
- h. During their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound;” and (ii) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and
- i. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

- 1. Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- 2. Promptly notify in writing the party who caused the subpoena or order to

1 issue in the other litigation that some or all of the material covered by the
 2 subpoena or order is subject to this Protective Order. Such notification
 3 shall include a copy of this Stipulated Protective Order; and

4 3. Cooperate with respect to all reasonable procedures sought to be pursued
 5 by the Designating Party whose Protected Material may be affected.

6 B. If the Designating Party timely seeks a protective order, the Party served
 7 with the subpoena or court order shall not produce any information designated in this
 8 action as “CONFIDENTIAL” before a determination by the Court from which the
 9 subpoena or order issued, unless the Party has obtained the Designating Party’s
 10 permission. The Designating Party shall bear the burden and expense of seeking
 11 protection in that court of its confidential material and nothing in these provisions
 12 should be construed as authorizing or encouraging a Receiving Party in this Action to
 13 disobey a lawful directive from another court.

14 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 15 **PRODUCED IN THIS LITIGATION**

16 A. The terms of this Order are applicable to information
 17 produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
 18 information produced by Non-Parties in connection with this litigation is protected by
 19 the remedies and relief provided by this Order. Nothing in these provisions should be
 20 construed as prohibiting a Non-Party from seeking additional protections.

21 B. In the event that a Party is required, by a valid discovery request, to
 22 produce a Non-Party’s confidential information in its possession, and the Party is
 23 subject to an agreement with the Non-Party not to produce the Non-Party’s confidential
 24 information, then the Party shall:

- 25 1. Promptly notify in writing the Requesting Party and the Nonparty
 26 that some or all of the information requested is subject to a confidentiality
 27 agreement with a Non-Party;
- 28 2. Promptly provide the Nonparty with a copy of the Stipulated

Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. Make the information requested available for inspection by the Nonparty, if requested.

C. If the Non-Party fails to seek a protective order from this Court within 14 days after receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

A. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (1) notify in writing the Designating Party of the unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies of the Protected Material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (4) request such person or persons to execute the "Acknowledgment and Agreement to be Bound" that is attached hereto as Exhibit A.

XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

A. When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior

1 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 2 parties reach an agreement on the effect of disclosure of a communication or
 3 information covered by the attorney-client privilege or work product protection, the
 4 parties may incorporate their agreement in the Stipulated Protective Order submitted to
 5 the Court.

6 **XIII. MISCELLANEOUS**

7 **A. Right to Further Relief**

- 8 1. Nothing in this Order abridges the right of any
 9 person to seek its modification by the Court in the future.

10 **B. Right to Assert Other Objections.**

- 11 1. By stipulating to the entry of this Stipulated Protective Order, no Party
 12 waives any right it otherwise would have to object to disclosing or
 13 producing any information or item on any ground not addressed in this
 14 Stipulated Protective Order. Similarly, no Party waives any right to object
 15 on any ground to use in evidence of any of the material covered by this
 16 Stipulated Protective Order.

17 **C. Filing Protected Material.**

- 18 1. A Party that seeks to file under seal any Protected Material must comply
 19 with Local Rule 79-5. Protected Material may only be filed under seal
 20 pursuant to a court order authorizing the sealing of the specific Protected
 21 Material at issue. If a Party's request to file Protected Material under seal
 22 is denied by the Court, then the Receiving Party may file the information
 23 in the public record unless otherwise instructed by the Court.

24 **XIV. FINAL DISPOSITION**

- 25 A. After the final disposition of this Action, as defined in Section V, within
 26 sixty (60) days of a written request by the Designating Party, each Receiving Party must
 27 return all Protected Material to the Producing Party or destroy such material. As used
 28 in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected
 2 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
 3 must submit a written certification to the Producing Party (and, if not the same person
 4 or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by
 5 category, where appropriate) all the Protected Material that was returned or destroyed
 6 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
 7 compilations, summaries or any other format reproducing or capturing any of the
 8 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
 9 archival copy of all pleadings; motion papers; trial, deposition, and hearing transcripts;
 10 legal memoranda; correspondence; deposition and trial exhibits; expert reports; attorney
 11 work product; and consultant and expert work product, even if such materials contain
 12 Protected Material. Any such archival copies that contain or constitute Protected
 13 Material remain subject to this Order as set forth in Section V.

14 B. Any violation of this Order may be punished by any and all appropriate
 15 measures including, without limitation, contempt proceedings and/or monetary
 16 sanctions.

17 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

18
 19 Dated: September 14, 2022

/s/ Robert S. Ross

20 Robert S. Ross

21 *Attorneys for Plaintiff Michael Sinel and Counter-*
 22 *Defendants Michael Sinel and MSSMD*
 23 *Investments, Inc.*

24 Dated: September 15, 2022


 25 Wendy M. Thomas

26 Betty T. Huynh

27 Justin Rhee

28 *Attorneys for Defendants and Counter-Claimants*
Genexa, Inc., Max Spielberg, and David Johnson

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2 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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4 Dated: September 15, 2022

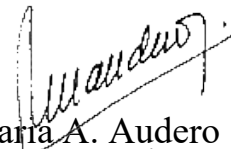
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address],
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for the
Central District of California on [DATE] in the case of *Michael Sinel v. Genexa, Inc.*
et al. Case No. 2:22-cv-03961-FMO-MAA.. I agree to comply with and to be bound
by all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity except
in strict compliance with the provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint

_____ [print or type full name] of

_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State Where Sworn and Signed: _____

Printed Name: _____

Signature: _____